

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA	)	
	)	
v.	)	NO.: 3:08-cr-142
	)	JUDGES PHILLIPS/SHIRLEY
	)	
DAVID C. KERNELL	)	

**MOTION FOR JURY QUESTIONNAIRE**

Comes the defendant, David C. Kernell, by and through undersigned counsel and pursuant to Rule 24 of the Federal Rules of Criminal Procedure, and hereby respectfully moves the Court for an Order approving the use of a written jury questionnaire to assist counsel in selecting a qualified jury in this case. In support of this motion, Mr. Kernell would show as follows:

1. Mr. Kernell has been charged in a one-count indictment alleging that he accessed a Yahoo email account belonging to Alaska Governor Sarah Palin.
2. The alleged conduct occurred during the Presidential campaign of 2008 when Governor Palin was a candidate for Vice President of the United States.
3. The incident and indictment produced extensive local and national media coverage.
4. Commentary both in the media and on websites indicated, to say the least, that many people quickly formed very strong opinions regarding the allegation.
5. Additionally, there have been published reports in the media speculating as to exactly how the unauthorized access to the email account occurred.

6. One of the primary reasons for the use of a questionnaire in this case will be to assist the Court and the parties in determining the extent to which pretrial publicity might have influenced certain jurors without the danger of asking for those opinions during voir dire and risking that the opinions affect the rest of the panel.

7. The proposed questionnaire will therefore both speed up the jury selection process and protect the parties right to an impartial jury.

8. Because the case involves a political figure, it will be important for the parties to be able to ask about strongly held beliefs of the potential jurors. Allowing the jurors to provide their answers in a written format will protect the privacy of the jurors and increase their comfort level.

9. The completed questionnaires could be disclosed only to counsel with the provision that they be returned after jury selection and then placed under seal. Such a proposal is consistent with this Court's respect for the privacy of personal information of potential jurors. See Local Rule 83.12.

10. The use of a juror questionnaire will provide an economical and efficient means of obtaining information concerning juror characteristics and attitudes that is essential to the meaningful exercise of both peremptory challenges and challenges for cause. Not only do such questionnaires save time and money, but they constitute a superior means of essential juror information because responses to written questionnaires may be more candid than those provided in an oral voir dire conducted by the Court and unfamiliar lawyers.

11. Moreover, written questionnaires avoid unnecessary juror embarrassment and limit the intrusions on privacy.

12. Counsel for Mr. Kernell propose that, once the potential panel is identified, the Clerk administer the questionnaire to the potential jurors in a manner that will allow the parties to receive the information at least one week prior to trial.

13. Counsel have prepared a draft questionnaire which is being sent to counsel for the government electronically along with this filing. After consultation with opposing counsel, there may be areas upon which counsel agree and can submit a revised proposed questionnaire to the Court prior to any necessary hearing on this matter.

WHEREFORE, Mr. Kernell respectfully requests that this Court approve the use of a jury questionnaire because of the publicity in the case and the nature of the allegations.

Respectfully submitted this 9<sup>th</sup> day of January, 2009.

RITCHIE, DILLARD & DAVIES, P.C.

/S/ WADE V. DAVIES  
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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and exact copy of the foregoing has been filed electronically this 9<sup>th</sup> day of January, 2009. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/s/ Wade V. Davies  
WADE V. DAVIES